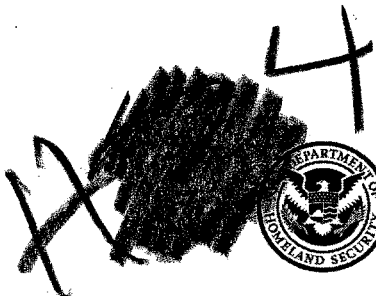


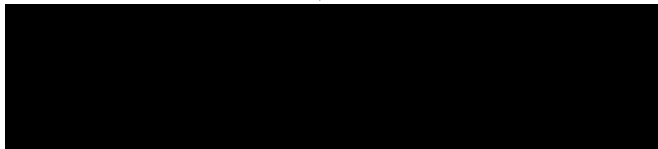
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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship
and Immigration
Services



FILE:



Office: PHOENIX, ARIZONA

Date:

MAR 24 2004

IN RE:

Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Phoenix, Arizona and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, the decision of the interim district director will be withdrawn and the application declared moot.

The applicant is a native and citizen of Mexico who was found by the interim district director to be inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for a period of more than 180 days but less than one year. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her now naturalized U.S. citizen spouse. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) in order to remain in the United States and reside with her U.S. citizen spouse and children.

The interim district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Interim District Director Decision* dated May 7, 2003.

On appeal the applicant requested 45 days in order to submit a brief. As of this date no documentation has been received by the AAO in support of the appeal.

According to the applicant's own sworn statement taken on June 18, 2002, during her adjustment interview, she was admitted to the United States in possession of a border-crossing card in August 1994. She remained longer than authorized and departed the United States in order to travel to Mexico in January 1998. The applicant reentered the United States using her border-crossing card in February 1998. On March 6, 2000 she filed an application for adjustment of status. It was her departure to Mexico in January 1998 that triggered her unlawful presence. The applicant was unlawfully present in the United States from April 1, 1997, the date calculation for unlawful presence begins, until January 1998 the date of her departure to Mexico, a period in excess of 180 days but less than one year, making her inadmissible under section 212(a)(9)(B)(i)(I) of the Act. As she has not departed since her last entry, she has not accrued unlawful presence since her entry in 1998.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who -

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, ***and again seeks admission within 3 years of the date of such aliens' departure or removal is inadmissible.*** [Emphasis added.]

The standard rule followed by Citizenship and Immigration Services is that an application for admission or adjustment is a "continuing" application adjudicated based on the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I & N Dec. 557 (BIA 1992). There has been no final decision made on the applicant's I-485 application, so the applicant, as of today, is still seeking admission by virtue of her

adjustment application. The applicant's departure was in January 1998. It has now been more than three years since the departure that made the inadmissibility issue arise. A clear reading of the law reveals that the applicant is no longer inadmissible. She, therefore, does not need a waiver of inadmissibility, so that application is moot.

ORDER: The appeal is sustained, the interim district director decision's is withdrawn and the application for waiver of inadmissibility declared moot.